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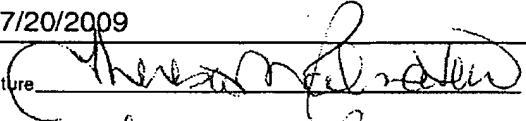
JUL 20 2009

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		67108-363 PUS1; Bu 1-2-28	
CERTIFICATE OF FACSIMILE I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300. on <u>7/20/2009</u> Signature  Typed or printed name <u>Theresa M Palmares</u>		Application Number 10/762,391	Filed 01/22/2004
		First Named Inventor Tian Bu	
		Art Unit 2457	Examiner Gold, Avi M.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

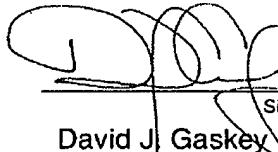
This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- attorney or agent of record.
Registration number 37,139
- attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



Signature
David J. Gaskey
Typed or printed name

(248) 988 8360

Telephone number

July 20, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

<input checked="" type="checkbox"/>	*Total of <u>1</u> forms are submitted.
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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67108-363 PUS1
Bu 1-2-28**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Tian Bu

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Serial Number: 10/762,391

JUL 20 2009

Filed: 01/22/2004

Group Art Unit: 2457

Examiner: Gold, Avi M.

Title: NETWORK ARCHITECTURE AND RELATED METHODS
FOR SURVIVING DENIAL OF SERVICE ATTACKS**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Box AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests pre-appeal brief review because there is no prima facie case of obviousness. Applicant's claim 1 is reproduced here for convenience.

1. An overlay network for maintaining traffic flow between a client and a server during a denial of service attack, comprising: a set of overlay nodes, coupled between the client and the server, wherein each overlay node comprises: a ranking module configured to rank the overlay nodes based on a performance metric, wherein an overlay node with a higher-ranking indicates that the overlay node has better performance for transferring traffic to the server than overlay nodes with lower-rankings; and a probing module configured to probe a portion of the overlay nodes with higher-rankings more frequently than overlay nodes with lower-rankings during probing intervals.

The rejections under 35 U.S.C. §103 should be withdrawn.

Applicant respectfully disagrees with the Examiner's suggestion that the *Chan, et al.* reference teaches a probing module consistent with the probing module recited in Applicant's claims. Further, the combination cannot be made.

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The *Chan, et al.* reference teaches sending an arbitration primitive “through *all*” the nodes on the sub-loop so that the “local winner” will receive its own arbitration primitive back and know that it has won the local arbitration. This allows the local winner source node to start a transaction. (Column 13, lines 10-26). Sending an arbitration primitive to all of the nodes on a loop is not the same thing as probing highest priority nodes. Instead, the *Chan, et al.* reference teaches sending an arbitration primitive along the entire loop. The node having an identity corresponding to the arbitration primitive will recognize itself as the local winner and perform the functions described in the *Chan, et al.* reference.

It is impossible to modify the *Chan, et al.* reference so that it would somehow probe higher ranking nodes more frequently than other nodes without changing the basic principle of operation in the *Chan, et al.* reference. That would remove sending the arbitration primitive to all the nodes so that the local winner will receive its own arbitration primitive to know that it has won. Removing that would render the arrangement of the reference incapable of achieving its intended result in addition to changing its principle of operation. Such a modification to the reference cannot be made as explained, for example, in MPEP 2143.01(V) and (VI). In other words, the proposed modification to the *Chan, et al.* reference cannot be made and the combination with *Osterman* is not permitted.

Further, what the *Osterman* reference actually teaches is requiring “more frequent statusing” of a device based upon the importance of that device to a particular client-application that requires such statusing. (Paragraph 0079). Obtaining status information as taught by the *Osterman* reference has nothing to do with the circulation of an arbitration primitive as taught in the *Chan, et al.* reference. Therefore, the teachings of the two references are not compatible or in any way combinable to provide a workable result. They are addressing entirely different scenarios and the statusing check of the *Osterman* reference has no applicability to the circulation of the arbitration primitive in the *Chan, et al.* reference. In other words, the proposed combination does not provide any meaningful or workable result. There would be no benefit to adding the statusing check of the *Osterman* reference to the *Chan, et al.* reference because it would have no impact on how the arbitration primitive is circulated according to the teachings of the *Chan, et al.* reference.

For any one of the above reasons, there is no *prima facie* case of obviousness. The rejections under 35 U.S.C. §103, which are all based upon the proposed combination of the

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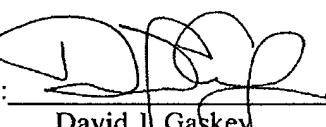
JUL 20 2009

Chan, et al. and *Osterman* references must be withdrawn.

The rejections of claims 3 and 23-26 based upon the proposed further addition of the *Corrigan, et al.* reference has the same deficiency because it is based upon the improper base combination of the *Chan, et al.* and *Osterman* references. The combination cannot be made and there is no *prima facie* case of obviousness.

Respectfully submitted,

CARLSON, GASKEY & OLDS

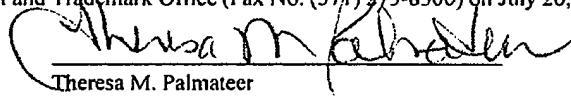
By: 

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Dated: July 20, 2009

CERTIFICATE OF FACSIMILE

I hereby certify that this Pre-Appeal Brief Request for Review, relative to Application Serial No. 10/762,391, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on July 20, 2009.


Theresa M. Palmateer